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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,462	09/23/2003	David W. Leung	077319-0382	9482

22428 7590 07/18/2005

FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

STEADMAN, DAVID J

ART UNIT	PAPER NUMBER
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1656

DATE MAILED: 07/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/667,462	Applicant(s) LEUNG ET AL.	
	Examiner David J. Steadman	Art Unit 1656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 11 February 2005 and 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/4/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of the Application***

[1] The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1656.

[2] Claim 1 is pending in the application.

[3] Applicants' amendment to the claim, filed 5/26/2005, is acknowledged. This listing of the claim replaces all prior versions and listings of the claim.

[4] Applicants' amendment to the specification, filed 5/26/2005, is acknowledged.

[5] Applicants' amendment to the drawing figures, filed 2/11/2005, is acknowledged.

[6] Receipt of an information disclosure statement (IDS), filed 2/4/2005, is acknowledged.

### ***Information Disclosure Statement***

[7] All references cited in the IDS filed 2/4/2005 have been considered by the examiner. A copy of Form PTO-1449 is attached to the instant Office action.

### ***Specification/Informalities***

[8] The objection to the specification for not containing a proper specific reference to the priority application(s) is withdrawn in view of the amendment to the specification.

[9] The objection to the specification as having a title that is not descriptive is withdrawn in view of the amendment to the specification.

[10] The objection to the specification for failure to comply with the requirements of 37 CFR 1.821 through 1.825 in not identifying disclosed sequences by a sequence identifier is withdrawn in view of the amendment to the specification.

### ***Drawings***

[11] The objection to the drawings for not properly identifying nucleotide and/or amino acid sequences by a sequence identifier is withdrawn in view of the amendment to the specification, specifically, the "Brief Description of the Drawings" section.

[12] The objection to the drawings as failing to comply with 37 CFR 1.84(u)(1) is withdrawn in view of the amendment to the drawing figures.

### ***Claim Objections***

[13] The objection to claim 1 in the recitation of "LPAAT" is withdrawn in view of the amendment to claim 1 to recite the phrase for which the abbreviation "LPAAT" is used.

### ***Claim Rejections - 35 USC § 112, Second Paragraph***

[14] The rejection of claim(s) 1 under 35 U.S.C. 112, second paragraph, as being indefinite is withdrawn in view of the amendment to the claim.

### ***Claim Rejections - 35 USC § 112, First Paragraph***

[15] The written description rejection of claim 1 under 35 U.S.C. 112, first paragraph, is withdrawn in view of the amendment to the claim.

Art Unit: 1656

[16] The scope of enablement rejection of claim 1 under 35 U.S.C. 112, first paragraph, is withdrawn in view of the amendment to the claim.

### ***Claim Rejections - 35 USC § 102***

[17] The rejection of claim 1 under 35 U.S.C. 102(e) as being anticipated by Baker et al. (US Patent Application Publication 2003/0073174 A1) is withdrawn in view of the amendment to claim 1. The amendment limits the polypeptide of claim 1 to a polypeptide comprising SEQ ID NO:15. The polypeptide of Baker et al. and the polypeptide of SEQ ID NO:15 are distinct in structure (as evidenced by Appendix A at pp. 13-16 of the Office action mailed 11/12/2004) and the examiner can find no teaching or suggestion in the prior art of record to modify the amino acid sequence of the polypeptide of Baker et al. such that it is identical to the polypeptide of SEQ ID NO:15. As such, the reference of Baker et al. does not teach or suggest the polypeptide of claim 1.

### ***Claim Rejections – Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 1656

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**[18]** Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of co-pending US Patent Application 10/667,494. An obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim is not patentably distinct from the reference claim(s) because the examined claim is either anticipated by, or would have been obvious over, the reference claim(s). See *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); and *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 is generic to all that is recited in claim 1 of the '494 application. In other words, claim 1 is anticipated by claim 1 of the '494 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

**[19]** Status of the claims:

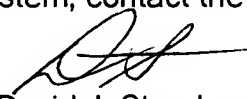
- Claim 1 is pending.
- Claim 1 is provisionally rejected.
- Claim 1 is not in condition for allowance.

Art Unit: 1656

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Steadman whose telephone number is 571-272-0942. The examiner can normally be reached on Mon to Thurs and alternate Fri, 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Steadman, Ph.D.  
Primary Examiner  
Art Unit 1656